

# Fighting to Make the Cut: Female Genital Cutting Studied within the Context of Cultural Relativism

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## I. INTRODUCTION

¶1 This comment is focused on a discussion of female genital cutting (“FGC”)<sup>1</sup> within the context of cultural relativism. Regardless of how FGC conflicts with American sensibilities, international movement toward an elimination of its existence is unlikely without thorough regard and understanding for the cultural, religious, and ethnic rationales that perpetuate its practice. A fair solution is needed, not to impose Western values on Easterners, but rather to prevent health issues among practicing populations and to empower women who continue to be subordinated through this painful and injurious practice.

¶2 Although there are instances of successful eradication, FGC persists despite considerable Western intervention. While Western solutions have been innovative, they have not been successfully adopted by most cultures. What is missing is a true understanding of FGC -- why it began and why it continues. To convince the FGC followers and supporters that they are doing more harm than good requires an understanding of how “good” is perceived. Without a tight grasp on their *own* rationale, Westerners trying to eradicate FGC will be unsuccessful in framing convincing arguments. If the focus is truly on a solution, and not on the imposition of Western beliefs on African cultures, then this solution must reconcile how on one hand FGC is a torturous, painful, barbaric practice, while on the other hand, it is a practice that lies at the heart of cherished tradition, value, and honor.<sup>2</sup>

¶3 Cultural relativism is an approach that clarifies how “human values, far from being universal, vary a great deal according to different cultural perspectives.”<sup>3</sup> It represents

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<sup>1</sup> For the purposes of this paper, the straightforward term Female Genital Cutting (“FGC”), rather than Female Genital Mutilation, Female Circumcision, or Female Genital Alteration, is used to represent the practice without suggesting or advancing moral judgment. See Kristen Bowman, *Comment: Bridging the Gap in the Hopes of Ending Female Genital Cutting*, 3 SANTA CLARA L. REV. 135 (2005) for a more detailed description of why FGC is the most appropriate name to refer to the practice and for an explanation of how the term Female Genital Mutilation fails to recognize the shame and hurt placed on communities that practice the procedure; see also Dena S. Davis, *Male and Female Genital Alteration: A Collision Course with the Law?*, 11 HEALTH MATRIX 487, 489-490 (2001) for an explanation of how the term Female Circumcision tends to trivialize the horrors of female procedures.

<sup>2</sup> Culture is generally the term used to define the “shared ideas, norms, values, and beliefs of a people and has both material and non-material components.” Oluyemisi Bamgbose, *Legal and Cultural Approaches to Sexual Matters in Africa: The Cry of the Adolescent Girl*, 10 U. MIAMI INT’L & COM. L. REV. 127, 128 (2002).

<sup>3</sup> Diana Ayton-Shenker, *The Challenge of Human Rights and Cultural Diversity*, United Nations

the notion that “one must not judge others using the standards of one’s own culture,” but should allow each culture to be analyzed on its own terms.<sup>4</sup> Cultural relativism can play a pivotal role in leading Westerners to establish a well-rounded understanding of FGC and develop a perspective not tainted solely with critical Western ideology.

This comment will begin with a definition of cultural relativism, followed by an analysis of other seemingly dangerous or harmful traditions other than FGC that have been examined through the lens of cultural relativism. FGC will then be discussed from different perspectives, beginning with the proponents’ side, continuing with the Western oppositional viewpoint, and ending with the proponents’ reaction toward the Western stance. After hearing opinions from all sides, success stories and alternatives to the practice will be discussed. This comment will conclude with a realistic solution for the eradication of FGC.

## II. CULTURAL RELATIVISM

The cutting of a little girl’s clitoris: coined as a “great moment in the life of women, [and] a *celebration*”<sup>5</sup> (emphasis added) in some regions, is a form of outright torture<sup>6</sup> and cruelty in the vast majority of the world. It is under the framework of cultural relativism that such divergent perspectives can coexist. Notwithstanding FGC’s health risks,<sup>7</sup> life-long psychological and physical effects,<sup>8</sup> and questionable origins,<sup>9</sup> the tradition’s strong cultural norms perpetuate its prevalence in certain regions of the world.

As a modern day example, cultural relativism can be applied to plastic surgeries (e.g., sex change operations and breast implants), tattoos, and body-piercing, which are viewed as normal, mainstream, and generally harmless by Americans.<sup>10</sup> African feminists analogize such elective cosmetic surgeries to FGC in that both create a hierarchical ordering of sexuality and gender,<sup>11</sup> and are likewise painful and extreme cultural avenues to make the woman’s body more attractive and in line with male-imposed cultural standards of beauty.<sup>12</sup>

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Department of Public Information (March 1995), available at <http://www.un.org/rights/dpi1627e.htm>.

<sup>4</sup> Sami Zeidan, *Agreeing to Disagree: Cultural Relativism and the Difficulty of Defining Terrorism in the Post-9/11 World*, 29 HASTINGS INT’L & COMP. L. REV. 215, 216 (2006).

<sup>5</sup> Radhika Coomaraswamy, *Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women*, 34 GEO. WASH. INT’L L. REV. 483, 492 (2002).

<sup>6</sup> See Bowman, *supra* note 1, at 5 for a reaction to how excised women react when confronted with the idea that this practice is one of “torture” (Waris Dirie, a Somali model and UN special ambassador rejected this definition of “torture” by arguing that her mother would have never tortured her and that the practice was conducted with the intention of making her pure, allowing her to be a good wife and mother, and bringing honor to her family).

<sup>7</sup> See *infra* Section V.

<sup>8</sup> See *infra* Section V.

<sup>9</sup> See *infra* Section V.

<sup>10</sup> Beth Ann Gillia, *Female Genital Mutilation: A Form of Persecution*, 27 N.M.L.REV. 579, 585 (1997).

<sup>11</sup> *Id.*

<sup>12</sup> See Nancy Ehrenreich and Mark Barr, *Intersex Surgery, Female Genital Cutting, and the Selective Condemnation of Cultural Practices*, 40 HARV. C.R.-C.L. L. REV. 71 (2005) for a comparison of FGC to intersex surgery; see also Natalie J. Friedenthal, *It’s Not All Mutilation: Distinguishing Between Female Genital Mutilation and Female Circumcision*, 19 N.Y. INT’L L. REV. 111, 137 – 140 (2006) (comparing FGC to American culture); but see Kristin Trangsrud, *Female Genital Female Genital Mutilation: Recommendations for Education and Policy*, The Universal Center for International Studies – UCIS Resources (1995), available at <http://www.ucis.unc.edu/resources/pubs/carolina/FGM/FGM.html> (noting

¶7 Cultural relativists adhere to the notion that all cultures are equally valid. They feel that human rights law should be shaped depending on “the cultural context in which they are imposed.”<sup>13</sup> The concept of cultural relativism is both an explanation in understanding other cultures as well as a concern when taken to its extreme.<sup>14</sup> When viewing FGC through the lens of cultural relativism, one may learn to recognize the honor, tradition, and purpose that FGC plays while failing to recognize a legitimate human rights violation.<sup>15</sup>

¶8 Cultural relativists argue that Westerners “establish norms based on their own idea of right and wrong.”<sup>16</sup> This causes Westerners to “inadequately recogniz[e] how different cultures possess different concepts of moral rules as well as different concepts of right and wrong.”<sup>17</sup> Although cultural relativism creates a passageway to understanding traditions that conflict with the American way, it does not act as a “substitute for human rights.”<sup>18</sup> Nor does cultural relativism preclude the declaration that “human rights are universal, indivisible, interdependent and interrelated.”<sup>19</sup> In conjunction with the expectation that Westerners ought to respect the lives and practices of those in other countries is the assumption that human rights ought to be preserved, respected, and obeyed. Certainly, a practice that inflicts immense psychological and emotional pain and suffering conflicts with such preservation of human rights.

¶9 At the heart of cultural relativism is the concept of a study that is purely neutral, in order to facilitate the understanding of a culture on its own merits.<sup>20</sup> A successful tool used to engage in such a process is historical particularism: the idea that the proper study of culture is done by studying just one culture in depth.<sup>21</sup> In addition, accurate, unbiased, and comprehensive information, along with open-mindedness, is essential to understanding cultural relativism.

¶10 In a modern day example, cultural relativism was invoked to conjure up a definition for terrorism. The struggle to define this term derives from the great tension by opposing groups who perceive acts of terrorism quite differently. For example, while some would label a suicide bomber as a “terrorist,” others would define this same person as a “freedom fighter.”<sup>22</sup> To get closer to defining terrorism, scholars engaged in an analysis of legal and political issues in the United States and abroad, combed through international documents that referred to terrorism, and strongly considered the notion of

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how such procedures or aesthetic changes are conducted without the serious medical risks that are involved with FGM and are typically performed on consenting adults, which is a sharp contrast to the practice of plastic surgery in America).

<sup>13</sup> Bowman, *supra* note 1, at 4.

<sup>14</sup> Cultural relativists believe that cultural norms are established by Western ideology, failing to recognize a world filled with cultures that differ substantially from that of the Western region. Ayton-Shenker, *supra* note 3.

<sup>15</sup> *Id.* (describing how genocide, slavery, torture, racial discrimination, discrimination against women, rights of the child, minorities and religious tolerance are all protected under Universal Human Rights, yet violated through the practice of FGM).

<sup>16</sup> Bowman, *supra* note 1, at 4.

<sup>17</sup> *Id.*

<sup>18</sup> Ayton-Shenker, *supra* note 3.

<sup>19</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

<sup>20</sup> Mark Glazer, *Cultural Relativism*, The University of Texas-Pan American (Dec. 1995), available at [http://www.panam.edu/faculty/mglazer/Theory/cultural\\_relativism.htm](http://www.panam.edu/faculty/mglazer/Theory/cultural_relativism.htm).

<sup>21</sup> *Id.*

<sup>22</sup> Zeidan, *supra* note 4, at 227.

“agreeing to disagree.”<sup>23</sup> Engaging in cultural relativism itself did not necessarily lead to a definition of terrorism,<sup>24</sup> but it did establish the concept that different parts of the world perceive the term quite differently.

### III. OTHER PRACTICES ANALYZED WITHIN CULTURAL RELATIVISM

¶11 Cultural relativism is useful in understanding cultural traditions, like FGC, that would otherwise be considered against Western rationale. Examples of similarly violent cultural practices include honor killings, sati,<sup>25</sup> and Chinese footbinding. These traditions, although barbaric to Westerners, are wrapped in centuries of beliefs and attitudes that support their perpetuation.

¶12 The practice of honor killings continues to take place in Arab and Mediterranean countries.<sup>26</sup> This tradition consists of family members<sup>27</sup> gruesomely stoning, stabbing, beating, or shooting a female family member with the intention of causing death for bringing dishonor to the family.<sup>28</sup> Such dishonor is viewed to have been instigated by the female who commits adultery, falls in love, wants a divorce, asks to choose one’s own marriage partner, socializes with males, or even fails to serve a meal on time.<sup>29</sup> However, proof of such condemned behavior is not required; honor killings have been performed on women who were merely suspected or alleged of such behavior, who have been raped, or who have simply done one of these acts in a man’s dream.<sup>30</sup>

¶13 The practice is justified by its proponents as adherence to Islamic culture, which is thought to support honor killings as an appropriate measure to defend the honor of men

<sup>23</sup> Zeidan, *supra* note 4, at 232.

<sup>24</sup> Although not adopted by the General Assembly, the United Nations High Level Panel on Threats, Challenges and Change proposed a description of terrorism as:

Any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

Follow-up to the Outcome of the Millennium Summit, Report of the Secretary-General’s High-Level Panel on Threats, Challenges, and Change, delivered to the General Assembly, U.N. Doc. A/59/565 (Dec. 2, 2004), *available at* <http://www.un.org/secureworld/report.pdf>. The Panel’s definition has been praised for being clear, absolute, balanced and valuable in moving the debate forward, but criticized for omissions (e.g., acts against property and infrastructure) and for not mandating the elimination of older, conflicting definitions of terrorism found in existing anti-terrorism conventions. *Council Comment: Defining Terrorism*, Newsletter of the American Society of International Law (Jan./Feb. 2005), *available at* <http://www.asil.org/pdfs/defterror050425.pdf>.

<sup>25</sup> Sati is the traditional Hindu practice of a widow burning herself alive on her husband’s funeral pyre. Erika Sussman, *Contending with Culture: An Analysis of the Female Genital Mutilation Act of 1996*, 31 CORNELL INT’L L.J. 193, 225 (1998).

<sup>26</sup> Coomaraswamy, *supra* note 5, at 495.

<sup>27</sup> Valerie Plant, *Honor Killings and the Asylum Gender Gap*, 15 J. TRANSNAT’L L. & POL’Y 109, 112 (2005) (noting that both male and female family members perpetuate honor killings).

<sup>28</sup> *Id.* at 111.

<sup>29</sup> Coomaraswamy, *supra* note 5, at 496. Plant, *supra* note 27, at 111.

<sup>30</sup> Plant, *supra* note 27, at 112. Amnesty International received a report of a man who killed his wife on the basis of a dream he had about her committing adultery. *Stop Violence Against Women, Culture of Discrimination: A Fact Sheet on “Honor” Killings*, AMNESTY INTERNATIONAL USA, *available at* <http://www.amnestyusa.org/women/honorkillings.html>; *see also* Roland-Pierre Paringaux, *Pakistan: Cost of a Lie*, MondeDiplo.com (May 2001), *available at* <http://mondediplo.com/2001/05/13pakistan> (referring to this particular incidence as an “oft-repeated story,” where a man dreamt that his wife was being unfaithful to him, woke up, and stabbed his wife to death).

who are associated with the victimized women.<sup>31</sup> However, studies of the tradition expose how “distorted and corrupted” the practice has become, leading to its widespread and unchecked abuse.<sup>32</sup> Scholars assert that the Koran does not mandate the practice,<sup>33</sup> however, reference to *Koran (Al Nisa)* 4:15 does state that if any women are “guilty of lewdness, confine them to houses until death do claim them.”<sup>34</sup> This does not explicitly mandate the practice of honor killings, but it does suggest severe punishment for “misbehaving” women.

¶14 Cultural relativism is useful in understanding why honor killings exist. In cultures which practice honor killings, moral order is thought to be disrupted by alleged or actual sexual impropriety.<sup>35</sup> Consequently, to restore the “social equilibrium and avoid feuds, the local culture requires the shedding of blood to wash away the shame of sexual dishonor.”<sup>36</sup> These strong convictions against sexual dishonor are upheld in the local courtrooms, where alleged honor killings are punished less severely than premeditated murder.<sup>37</sup> Although a clear violation of international human rights law, international covenants, and assertions from the Human Rights Committee,<sup>38</sup> the practice continues because of cultural loyalty as well as legal defenses provided to those who are found guilty of such killings.<sup>39</sup>

¶15 Sati is another practice that can be understood more clearly through the lens of cultural relativism. Sati is a voluntary<sup>40</sup> Hindu custom marked by a widower “throw[ing] herself on her husband’s funeral pyre at his ceremonial cremation.”<sup>41</sup> Although the practice is thought to be rooted in either the Hindu religion or Indian culture, studies show that sati was perpetuated through the collaboration of British colonial officials and Hindu pundits who, when failing to find a religious basis for the practice, manipulated the meaning of sati by “ignoring and marginalizing any convictions that did not accord with

<sup>31</sup> Coomaraswamy, *supra* note 5, at 497 (stating that the code of honor ensures female preservation of their chastity and obedience. Also stating that masculinity and machismo in certain cultures, like those that practice honor killings, have an “undercurrent of violence,” with honor acting as an excuse for its manifestation).

<sup>32</sup> Yolanda Asamoah-Wade, *Women’s Human Rights and “Honor Killings” in Islamic Cultures*, 8 BUFF. WOMEN’S L.J. 21, 21 (1999-2000).

<sup>33</sup> Hillary Mayell, *Thousands of Women Killed for Family “Honor,”* National Geographic News (Feb. 12, 2002), available at [http://news.nationalgeographic.com/news/2002/02/0212\\_020212\\_honorkilling.html](http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling.html).

<sup>34</sup> Kathleen A. Portuan Miller, *The Other Side of the Coin: A Look at Islamic Law as Compared to Anglo-American Law – Do Muslim Women Really Have Fewer Rights Than American Women?*, 16 N.Y. INT’L L. REV. 65, 91 n.153 (2003).

<sup>35</sup> Carolyn Fluehr-Lobban, *Anthropologists Cultural Relativism, and Universal Rights*, The Chronicle of Higher Education (June 9, 1995), available at <http://home.sandiego.edu/~baber/globalethics/CulturalRelativism.html>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See *infra* Section VII and notes 165-174.

<sup>39</sup> Asamoah-Wade, *supra* note 32, at 22; see also Plant, *supra* note 27, at 115 (noting that Article 340 of the Jordanian penal code specifically allows for an exemption from penalty or mitigated sentences for honor killings under particular circumstances, such as if a man catches his wife or female relative actively engaging in adultery).

<sup>40</sup> For more information, see Maja Daruwala, *Central Sati Act – An Analysis*, PUCL Bulletin (July 1988), available at <http://www.pucl.org/from-archives/Gender/sati.htm>.

<sup>41</sup> But see Sati – The Burning of the Widow [hereinafter *Burning of the Widow*], <http://www.sos-sexisme.org/English.sati.htm> (pointing out that there are documented cases of mothers committing sati on their son’s pyre as well as husbands committing sati on their wives pyres).

their presumptions.”<sup>42</sup> It is also believed that sati was used to deter wives from killing their husbands to run away with secret lovers.<sup>43</sup> Like honor killings and FGC, sati is linked to honor and respect. The family of a woman was thought to be blessed for seven generations following a family member committing sati.<sup>44</sup>

¶16 Sati was criminalized in the early nineteenth century;<sup>45</sup> further, there is now agreement based on prevalent religions<sup>46</sup> and standards of human rights<sup>47</sup> that the practice should be discouraged. However, not only was there a resurgence of sati in the latter half of the twentieth century,<sup>48</sup> but to this day, change is slight due to the arrogance of central government, cultural resistance of yielding to “judgmental” feminists,<sup>49</sup> and continued beliefs that sati has deep roots in Indian culture.<sup>50</sup> Moreover, even if sati is not required in a particular culture, widows remain ostracized by their communities.<sup>51</sup>

¶17 Another long-held cultural tradition is Chinese footbinding, a painful, physically debilitating, and infection laden cultural practice supported in China for around a thousand years and practiced on more than one billion women.<sup>52</sup> Like FGC, footbinding was considered aesthetically pleasing, kept women weak, out of power, less likely to succeed, and allowed a wife to be dominated by her husband.<sup>53</sup> Chinese mothers strongly supported the practice out of fear that a non-footbound daughter would be unmarriageable.<sup>54</sup> The eradication of footbinding as a result of anti-footbinding societies and the revolution of Sun Yat-Sen will be discussed in subsequent sections.<sup>55</sup>

<sup>42</sup> Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1206 (2001).

<sup>43</sup> *Id.* (explaining that a rationale to the practice was to prevent wives from poisoning their wealthy husbands and then marrying their real lovers); see also Catherine E. Polishi, *Universal Rights and Cultural Relativism: Hinduism and Islam Deconstructed*, BC Journal of International Affairs (Spring 2003), available at <http://www.jhubc.it/bcjournal/articles/polisi.cfm> (noting that one such explanation is that the practice began in 721 A.D. when Mohammed bin Qasim took control of India and subsequently killed thousands of men whose enslaved wives chose to kill themselves rather than live as slaves).

<sup>44</sup> *Burning of the Widow*, *supra* note 41.

<sup>45</sup> Sussman, *supra* note 25, at 233.

<sup>46</sup> Islam, Christianity, and Judaism have rejected sati; however, simply because the custom is incompatible with one’s religion, does not automatically preclude its existence. Jorg Fisch, *Dying for the Dead: Sati in Universal Context*, Journal of World History, September 2005, available at <http://www.historycooperative.org/journals/jwh/16.3/fisch.html>; see also Sussman, *supra* note 25, at 193 (stating that “despite religious support for sati, many scholars have argued that the Gita, considered by many adherents to be the supreme Hindu ethical edict, prohibits actions which are based entirely upon the expectation of future rewards” and that consequently, “self-immolation in the hope of a “good afterlife” [which is what lies behind the practice of sati], would be immoral.”); but see *id.* (asserting that widow burning has historically been justified on religious grounds and that a review of Hindu scriptural texts “have been used by activists on both sides of the issue to construct arguments condemning or upholding the practice on religious grounds.”).

<sup>47</sup> “Although sati is incompatible with what now are no longer standards of civilization but standards of human rights . . . [n]evertheless, the decisive factor remains religion, with its different forms of belief in a hereafter.” Fisch, *supra* note 46.

<sup>48</sup> Sussman, *supra* note 25, at 233-234.

<sup>49</sup> Coomaraswamy, *supra* note 5, at 495.

<sup>50</sup> Sussman, *supra* note 25, at 235.

<sup>51</sup> One such form of enduring ostracization is widows not getting invited to social celebrations. Anju Mary Paul, *Films on Widow Abuse Survive Their Own Ordeals*, FEMINIST.COM, May 14, 2006, <http://www.feminist.com/news/vaw75.html>.

<sup>52</sup> Candace Hutchins, Chinese Foot Binding, <http://www.ccds.charlotte.nc.us/History/China/04/hutchins/hutchins.htm> (last visited Nov. 1, 2007).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> See *infra* Section IX and notes 219-223.

## IV. FGC AND ITS SUPPORTERS

¶18 The three types of FGC<sup>56</sup> - Sunna,<sup>57</sup> Excision,<sup>58</sup> and Infibulation<sup>59</sup> - are still performed on approximately two million girls a year<sup>60</sup> in over twenty eight countries.<sup>61</sup> All three practices are performed without anesthesia and oftentimes with instruments that are not sterile and used on multiple girls.<sup>62</sup> There is no one explanation for why the practice of FGC continues.<sup>63</sup> Sexual control, protection from rape, reduction in the likelihood of pre-marital intercourse, marriageability, fear, money, hygiene, tradition, and religion are all driving forces.<sup>64</sup> Even rationales that directly contradict medical research, such as that FGC will cleanse the body, have been cited by FGC supporters.

¶19 One of the most commonly cited justifications for FGC comes from the Islamic religion, many of whose adherents believe sunna circumcision is mandated in the Koran.<sup>65</sup> Such a belief is grounded in religious admonitions claiming that FGC is a “positive ‘sunna,’”<sup>66</sup> that follows the traditions of the Prophet Mohammed.<sup>67</sup> Muslim proponents also cite quotes that advise followers to “reduce but not destroy” the clitoris.<sup>68</sup>

¶20 Another contributing factor to the perpetration of FGC is the powerful role marriage plays in African culture.<sup>69</sup> A woman’s marital status is often associated with her status in the African community.<sup>70</sup> With a common prerequisite to marriage being

<sup>56</sup> A fourth type of FGC – unclassified FGC – includes procedures that are unique to local customers, but that all involve a prick, pierce, or incision to the clitoris and/or labia. Alexi Nicole Wood, *A Cultural Rite of Passage or a Form of Torture: Female Genital Mutilation From An International Law Perspective*, 12 HASTINGS WOMEN’S L.J. 347, 356 (2001).

<sup>57</sup> Sunna is the least severe form of FGC and involves removing the prepuce, or hood, of the clitoris. *Id.* at 353.

<sup>58</sup> Excision is the practice of removing both the clitoris and either all or part of the labia minora. *Id.* at 354.

<sup>59</sup> Infibulation is the most severe form of FGC and is practiced on around fifteen percent of FGC affected females. It involves removing the clitoris, labia minora, and at least two-thirds of the labia majora, which is subsequently stitched together with catgut, silk, or thorns. *Id.*

<sup>60</sup> Meredith Aherne, *Olowo v. Ashcroft: Granting Parental Asylum Based on a Child’s Refugee Status*, 18 PACE INT’L L. REV. 317, 319 (2006).

<sup>61</sup> Bowman, *supra* note 1.

<sup>62</sup> See *infra* note 135 and accompanying text.

<sup>63</sup> Hope Lewis, *Between Irua and “Female Genital Mutilation”*: *Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1 (1995) (pointing out that ethnic groups defend the practice via a mixture of motivations and/or rationales).

<sup>64</sup> Wood, *supra* note 56, at 356; see also Female Genital Mutilation (FGM) in Africa, the Middle East & Far East: Where, Why and How It is Done [hereinafter Where, Why and How It is Done], Religious Tolerance.Org – Ontario Consultants on Religious Tolerance, [www.religioustolerance.org/fem\\_cirm.1.htm](http://www.religioustolerance.org/fem_cirm.1.htm).

<sup>65</sup> For an interview reflecting this viewpoint, see *Razor’s Edge – The Controversy of Female Genital Mutilation* [hereinafter *Razor’s Edge*], IRINNews.org - UN Office for the Coordination of Humanitarian Affairs, [www.irinnews.org/webspecials/FGM/45990.asp](http://www.irinnews.org/webspecials/FGM/45990.asp); but see Lewis, *supra* note 63 (noting that few religious leaders continue to contest that Muslim Law recommends or requires FGC).

<sup>66</sup> Blake M. Guy, *Female Genital Excision and the Implications of Federal Prohibition*, 2 WM. & MARY. J. WOMEN & L. 125, 142 (1995).

<sup>67</sup> *Id.*

<sup>68</sup> Bowman, *supra* note 1.

<sup>69</sup> However, more recent surveys disclose that high school boys would prefer marrying girls who have not been infibulated. Kenya: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC) [hereinafter *Kenya: Report on FGC*], Office of the Senior Coordinator for International Women’s Issues (June 1, 2001), available at <http://www.state.gov/g/wi/rls/rep/crfgm/10103.thm>

<sup>70</sup> Shayla McGee, *Female Circumcision in Africa: Procedures, Rationales, Solutions, and The Road To Recovery*, 11 WASH. & LEE RACE & ETHNIC ANC. L.J. 133, 142 (2005).

mutilation of the potential wife,<sup>71</sup> FGC is encouraged by mothers to ward against unmarriageability.<sup>72</sup> Consequently, the very gender that is physically pained and affected by its harmful consequences is the same gender supporting and perpetuating the practice,<sup>73</sup> oftentimes under the basis (and assumedly, fear) that unexcised daughters will be unmarriageable and severely ostracized from the community.<sup>74</sup> This has been evidenced by women who refuse the procedure and are subsequently rejected from their communities and unaccepted in social circles.<sup>75</sup> The unexcised woman is left to live her life enduring ridicule and without a husband.<sup>76</sup>

¶21 Economics continues to play a role for parties on both sides of the procedure. Excisors, many of whom are women, make “more money than they could make any other way.”<sup>77</sup> And, because the dowry price<sup>78</sup> increases if the woman’s virginity has been preserved,<sup>79</sup> there is a financial incentive for the families of eligible girls to perform FGC on their daughters.<sup>80</sup>

¶22 Mothers and grandmothers, cut as little girls themselves, carry the weight in upholding these rituals, with younger females embracing the legitimacy of female authority.<sup>81</sup> Understandably, it is challenging to eradicate a procedure that is actively supported and legitimated by the very individuals suffering from its effects. Women are the “caretakers of the very culture that often discriminates against them”<sup>82</sup> and have been “socialized to believe that they are the custodians of the very laws, rituals, and practices that discriminate against them.”<sup>83</sup>

¶23 The control of a woman’s “insatiable and irresponsible sex drive”<sup>84</sup> is a long prevailing justification for the continuation of FGC.<sup>85</sup> Within cultures that practice FGC,

<sup>71</sup> Husbands are even allowed to inspect the bride’s body prior to marriage. Trangsrud, *supra* note 12.

<sup>72</sup> Frances A. Althaus, *Female Circumcision: Rite of Passage or Violation of Rights*, 23 *International Family Planning Perspectives* 3 (September 1997), available at <http://www.guttmacher.org/pubs/journals/2313097.html>, (mother’s regularly check their excised daughters to confirm the “closed” condition of their daughter’s genitalia).

<sup>73</sup> See Lewis, *supra* note 63 (noting that the practice is performed with the “consent” of the girls’ parents); but see Althaus, *supra* note 72 (stating that the girl’s viewpoint is unimportant and that she has no choice regarding whether the procedure will be done); however, there are stories of little girls asking for the procedure because they want to fit in with the group of excised girls. Sometimes males perform the procedure, such as in Egypt. Fact Sheet No.23, *Harmful Traditional Practices Affecting the Health of Women and Children* [hereinafter Fact Sheet No. 23], Office of the High Commissioner for Human Rights.

<sup>74</sup> Coomaraswamy, *supra* note 5, at 493. The concept of unmarriageability derives from the idea that unexcised women are presumed promiscuous because her virginity is in question. McGee, *supra* note 71, at 142; see also Trangsrud, *supra* note 12.

<sup>75</sup> Guy, *supra* note 66, at 146.

<sup>76</sup> Trangsrud, *supra* note 12.

<sup>77</sup> *Id.*; see also Lewis, *supra* note 63 (the concept of economics maintaining a practice is not new: surgeons benefited lucratively in Europe and America and the nineteenth- and twentieth-century by performing clitoridectomy, excision, and infibulation to rid women of promiscuity and “cure” female masturbation).

<sup>78</sup> See generally Fact Sheet No.23, *supra* note 73 (quoting the Commission that “the Dowry price of a woman is her exchange value in cash, kind or any other agreed form, such as a period of employment” and that both families must gain from the exchange).

<sup>79</sup> *Id.* (if the woman’s virginity has been preserved, likely through FGC, the dowry price will be higher).

<sup>80</sup> *Id.*

<sup>81</sup> Coomaraswamy, *supra* note 5, at 490.

<sup>82</sup> *Id.* at 487.

<sup>83</sup> *Id.* at 487 – 88.

<sup>84</sup> Trangsrud, *supra* note 12; see also Aherne, *supra* note 60, at 324 (“[S]ex is considered in many cultures to be an act done for a man’s enjoyment and something a woman does out of duty to her husband.”).

<sup>85</sup> Where, Why, and How It Is Done, *supra* note 64.

there is great interest in diminishing the power of women relative to men, as evidenced by the belief that female sexual organs should not compete with male genitalia.<sup>86</sup> FGC is used to reduce the sexual response of women,<sup>87</sup> with the intention of making them less sexually active prior to marriage as well as less likely to seek an extra-marital affair during marriage.<sup>88</sup>

¶24 Additionally, medical myths contribute to the continuation of FGC. Proponents believe that excision is essential to prevent infection and maintain cleanliness.<sup>89</sup> Excision is considered a more “hygienic sound form of health care than remaining unexcised”<sup>90</sup> and is believed to improve the aesthetics of female genitalia and prevent venereal diseases.<sup>91</sup> Despite evidence to the contrary, excision is also believed necessary for the safe delivery of a baby and thought to increase fertility as well as improve a woman’s production of healthy children.<sup>92</sup> FGC practicing communities believe the clitoris is a “dangerous organ” that will cause symbolic or spiritual injuries to newborns and as a result decrease the number of live births.<sup>93</sup> In the “bisexuality of the gods myth,”<sup>94</sup> the clitoris will grow to the size of a penis if left as is. Additionally, a girl’s clitoris must be removed so that she is free from male characteristics before she is allowed to enter the world of adults.<sup>95</sup>

¶25 Honor also plays a large role in the perpetuation of FGC. While Westerners define honor as virtue, fairness, truth, sincerity, and link the concept of honor to individual identity rather than to group identity, the traditional and prevalent definition of honor in African societies is respect of an honor group, such as “the family, the extended clan, the tribe, [and] the religious sect.”<sup>96</sup> This concept of group honor is manifested in cultures that practice FGC, where honor of a family has been said to lie “between the legs of a woman.”<sup>97</sup> Such a concept reveals that what in the West is considered barbaric, is honor elsewhere.<sup>98</sup> To maintain their group identity women acquiesce in the practice.<sup>99</sup> This concept of group identity within a culture is central to the meaning of culture itself, as evidenced in the assertions that “the affirmation of a cultural practice is an affirmation of

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<sup>86</sup> Trangsrud, *supra* note 12.

<sup>87</sup> It is believed that the clitoris is a type of penis; an unaltered clitoris is thought to cause women to be as sexually aggressive as men are expected to be; *see also* Davis, *supra* note 1, at 540.

<sup>88</sup> *Where, Why, and How It Is Done*, *supra* note 64; *see also* Wood, *supra* note 56, at 367, noting how one infibulated Mali woman sees her complete lack of sexual desire as a form of liberation, one that allows her to be in complete control of her body.

<sup>89</sup> Guy, *supra* note 66, at 149.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 149-150; *but see* Trangsrud, *supra* note 12 (discussing a study that found that infibulated women are almost twice as likely as other women to have lower fertility).

<sup>93</sup> Guy, *supra* note 66, at 150.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> John Tierney, *Another Man’s Honor*, N.Y. TIMES, July 25, 2006, at A19.

<sup>97</sup> Wood, *supra* note 56 at 358, n.73.

<sup>98</sup> Tierney, *supra* note 96.

<sup>99</sup> Coomaraswamy, *supra* note 5, at 484; *see also* Davis, *supra* note 1, at 494 (quoting a Muslim woman’s argument against eradication: “I don’t want to see this ceremony eradicated, because it binds us, we the women, together. We respect each other in this way, and we feel free together because of it.”).

the particular cultural group”<sup>100</sup> and that culture is “most meaningful in a group context.”<sup>101</sup>

#### V. FGC – OPPOSITION BY WESTERNERS

¶26 The health and well-being of large numbers of women and girls are the two prominent concerns Westerners have about FGC.<sup>102</sup> The possible contribution FGC has to the transmission of Human Immunodeficiency Virus (HIV) has influenced Westerners to feel an “ethical responsibility to take personal or collective action to prevent FGS whenever possible.”<sup>103</sup> Besides HIV, life-threatening health consequences of FGC include uncontrolled bleeding, infection, extreme pain, urine retention, shock, and damage to the urethra or anus.<sup>104</sup> At least some of these complications arise from unsanitary and unsterile instruments used to perform the procedure.<sup>105</sup>

¶27 There are immediate and long-term physical complications associated with FGC. Intense pain, hemorrhage, wound infection, damage to adjoining organs, and urine retention are among the many immediate health complications.<sup>106</sup> Western medical knowledge indicates that girls and women who undergo FGC are at a higher risk for HIV and AIDS.<sup>107</sup> Furthermore, FGC leaves girls and women vulnerable to infections, painful lifelong complications of the gynecological and genitourinary tract,<sup>108</sup> painful intercourse,<sup>109</sup> fatal pregnancies,<sup>110</sup> and extremely painful menstruation.<sup>111</sup> While the belief in practicing cultures is that FGC cures the female genitalia of its uncleanness, danger, and poison,<sup>112</sup> the reality is that FGC causes fatal physical complications.

<sup>100</sup> S. James Anaya, *International Human Rights and Indigenous Peoples: The Move Toward the Multicultural State*, 21 ARIZ. J. INT’L & COMP. L. 13, 22 (2004).

<sup>101</sup> *Id.*

<sup>102</sup> Lewis, *supra* note 63; *see also* Althaus, *supra* note 73 (“Female circumcision a ritualized form of child abuse and violence against women, a violation of human rights.”).

<sup>103</sup> Lewis, *supra* note 63. *See also* Mary Katherine Keown, *Brutal practice linked to AIDS; Researchers have found ties to female genital mutilation and the rise in HIV cases in countries that practice it*, TORONTO STAR, Sept. 1, 2007, at L09 (noting that “[s]poradic research data over the past 10 years has correlated dirty cutting equipment, hemorrhages requiring blood transfusions and injurious sexual intercourse causing vaginal tearing and lesions with rising rates of HIV transmission in countries where female genital mutilation . . . is widely practiced.”).

<sup>104</sup> *Id.*

<sup>105</sup> *See generally* Fact Sheet No. 23, *supra* note 73 (explaining that a kitchen knife, razor-blade, piece of glass, or sharp fingernail are used to perform the act, and that such instruments are “used repeatedly on numerous girls, thus increasing the risk of blood-transmitted diseases, including HIV/AIDS”).

<sup>106</sup> Harmful Traditional Health Practices, RHO: Reproductive Health Outlook, [http://www.rho.org/html/hthps\\_keyissues.htm](http://www.rho.org/html/hthps_keyissues.htm).

<sup>107</sup> Bowman, *supra* note 1 (“Both during the procedure, when the same bloody instrument is used, and then again during intercourse when difficulty in penetration often leads to a woman being ripped during intercourse and a man’s skin chaffing so badly that he, too, bleeds, the concern of HIV spreading is real and serious.”).

<sup>108</sup> Trangsrud, *supra* note 12; *see also* Harmful Traditional Health Practices, *supra* note 107 (claiming that recurrent urinary tract infections are common amongst victims of FGC. However, its study showed no association between FGC and reproductive tract infections, HIV, or hepatitis B, as well as any association between FGC and prenatal death).

<sup>109</sup> Wood, *supra* note 56, at 363.

<sup>110</sup> Bowman, *supra* note 1, explaining that a mother giving birth through such a small opening can cause the crushing of the child’s skull.

<sup>111</sup> Wood, *supra* note 56, at 363.

<sup>112</sup> Thereby, it is believed that the female genitalia must be cleaned through FGC to prevent against

¶28 In addition to physical complications, psychological trauma is another concern. It is “well known that extensive and enduring pain can create deep psychological wounds,”<sup>113</sup> although cultural pressure to conform likely mitigates psychological suffering.<sup>114</sup> Perceiving their mutilation as proof of cleanliness and normalcy, little girls are likely to accept the severe pain endured, and even feel psychologically relieved,<sup>115</sup> rather than suffer from trauma.<sup>116</sup> Although psychological effects are difficult to discern and “buried in layers of denial and acceptance of social norms,”<sup>117</sup> documentation exists illustrating changes in the behavior of young mutilated girls.<sup>118</sup> Such documentation reveals how once-friendly children were transformed into trembling, weeping, and fearful young girls, petrified at the sight of any indication of further mutilation.<sup>119</sup> Though extensive research on the subject is lacking,<sup>120</sup> chronic anxiety and depression has repeatedly been observed as well as confusion and betrayal.<sup>121</sup> Additionally, sexual dysfunction, depression, feelings of terror, anxiety, humiliation, and post traumatic stress disorder have all been cited as long-term emotional and psychological effects of FGC.<sup>122</sup> Recurring nightmares are also thought to be experienced by most infibulated children.<sup>123</sup> Undeniably, psychological repercussions result from the trauma associated with FGC.

¶29 In regards to FGC’s supposed connection to religion, Westerners cite to the many successful eradications that have occurred in Islamic communities to support their argument that FGC is erroneously connected to religion.<sup>124</sup> To Westerners, such eradications provide proof that rejecting FGC does not forbid one from practicing the

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harming a man during intercourse or killing a baby during birth. *Id.* at 358.

<sup>113</sup> IAN FERGUSON AND PAMELA ELLIS, CANADA DEPARTMENT OF JUSTICE FEMALE GENITAL MUTILATION: A REVIEW OF CURRENT LITERATURE (1995), <http://www.canada-justice.ca/en/ps/rs/rep/1995/wd95-15a.pdf>; *see also* Bamgbose, *supra* note 2, at 127 (“Early experience is important. Children and the adolescents at these stages of life are more malleable than at the stage of adulthood. Initially, they can absorb whatever experiences they are exposed to and retain their effects indefinitely.”).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*; *but see* Trangsrud, *supra* note 12 (quoting research results reflecting that “girls and women in certain societies accept suffering as part of their sense of womanhood, and that FGM gives them pride and membership in the community of women without any negative psychological effects”). Trangsrud reacts to these results by asserting that “such arguments . . . serve to justify the continued practice of FGM while overlooking the physical and psychological trauma that girls and women who have either undergone FGM or face the threat of FGM endure.” *Id.* The concept of leaving puberty and entering adulthood by the means of circumcision was practiced on boys as well, particularly in Uganda, where males between the ages of 15 and 20, without anesthesia, would be publicly subjected to the procedure. LILIANE C.N. LUWAGA, PARENT-ADOLESCENT COMMUNICATION ON SEXUALITY IN THE CONTEXT OF HIV/AIDS IN UGANDA: AN EXPLORATORY STUDY (2004), <http://www.uib.no/psyfa/hemil/satz/public/publications/Luwaga%20Master%20Thesis.pdf>; *also see* Davis, *supra* note 1, at 546, n.257.

<sup>116</sup> Ferguson & Ellis, *supra* note 113.

<sup>117</sup> Guy, *supra* note 66, at 140, n.108.

<sup>118</sup> Ferguson & Ellis, *supra* note 113.

<sup>119</sup> *Id.* (stating that girls panicked at the sight of a spatula and/or metal instrument, like a stethoscope).

<sup>120</sup> Guy, *supra* note 66, at 139, n.104.

<sup>121</sup> *Id.* at 140.

<sup>122</sup> Jaimee K. Wellerstein, *In the Name of Tradition: Eradicating the Harmful Practice of Female Genital Mutilation*, 22 LOY. L.A. INT’L & COMP. L. REV. 99, 108 (1999).

<sup>123</sup> WORLD HEALTH ORG., FEMALE GENITAL MUTILATION: NEW KNOWLEDGE SPURS OPTIMISM (2006), available at <http://www.who.int/reproductive-health/hrp/progress/72.pdf>.

<sup>124</sup> *See supra* notes 70–74 and accompanying text for a description of how FGC has been linked to religion; *see also infra* Section IX for descriptions of success stories eradicating FGC in Muslim predominant societies.

Islamic religion. In other words, practicing Islam and complying with its scripture does not hinge on the acceptance of FGC. In addition, not only have an increasing number of Imams<sup>125</sup> claimed that the Koran does not mandate the cutting of a woman,<sup>126</sup> but research also shows that the Koran “neither explicitly nor implicitly mentions FGC.”<sup>127</sup> In fact, close analyses of the framework of the Koran reveal that it meant to “generally raise the status of women compared to earlier Arabian society.”<sup>128</sup> These positions are remarkably at odds with a practice centered on subordinating the sexuality and functioning of females in Islamic societies. A study of Islam even reflects that the “emancipation of women was a project dear to the Prophet’s (Muhammad’s) heart”<sup>129</sup> and that the Koran made “men and women partners before God, with identical duties and responsibilities.”<sup>130</sup> Further support that FGC’s connection to religion is weak is that the practice predates both Islam and Christianity, dating as far back to the fifth century B.C.<sup>131</sup> Additionally, Jews once practiced FGC,<sup>132</sup> the practice continues to be performed in countries that predominantly follow Christianity, and the presence of FGC is oftentimes rare or even nonexistent in many Muslim countries.<sup>133</sup>

¶30 Western feminists also argue that major international human rights instruments are violated through the practice of FGC, including the right to equal protection and nondiscrimination, the rights of children, the right to life, the right to be free from torture, and the right to health.<sup>134</sup>

<sup>125</sup> Imams are persons that lead Muslim congregational prayers.

<sup>126</sup> Nirit Ben-Ari, *Changing Tradition to Safeguard Women – Villagers Join Campaigns Against Female Genital Mutilation*, 17 *Africa Recovery* 1 (May 2003), available at <http://www.un.org/ecosocdev/geninfo/afrec/vol17no1/171wm1.htm>.

<sup>127</sup> Press Release, 6 February, International Day of Zero Tolerance of Female Genital Mutilation: Parliamentarians Raise Awareness (Feb. 3, 2006), available at <http://www.ipu.org/press-e/gen219.htm>; see also Guy, *supra* note 66, at 142 (“no mention of either excision or infibulation is found in the Koran”); Bill Weinberg, *Islamic Scholars Condemn Female Genital Mutilation* (Dec. 2006), World War 4 Report: Deconstructing the War on Terrorism, available at <http://ww4report.com/node/2879> (quoting Mohammed Sayyed Tantawi, the Grand Sheikh of al-Azhar, Sunni Islam’s most prestigious university, who announced at an anti-FGM conference that during his studies and research in Islam he did not find anything that he could “trust as beseeching female circumcision.”); Lamin M. Dibba, *Female Genital Cutting Unislamic*, THE DAILY OBSERVER (THE GAMBIA), June 1, 2007 (quoting Edele Thebaud, the acting UNICEF Representative in The Gambia that “. . . it is now evident that FGC is not Islamic.”).

<sup>128</sup> Nicholas D. Kristof, *Looking for Islam’s Luthers*, N.Y. TIMES, October 15, 2006, at 413.

<sup>129</sup> KAREN ARMSTRONG, ISLAM 56 (2000).

<sup>130</sup> *Id.*

<sup>131</sup> Wood, *supra* note 56, at 357.

<sup>132</sup> Ethiopian Jews have long discontinued the practice and FGC is currently not practiced in Israel. Where, Why, and How It Is Done, *supra* note 64.

<sup>133</sup> *Id.* However, one cannot limit his or her search for religious explanation strictly by limiting themselves to the Muslim text, for, like Judaism and Christianity, oral teachings and extrabiblical sources (such as rabbinic teachings) can be the source of binding religious obligations. Supplemental sources of Islamic law include hadith (accounts of the sayings and doings of the Prophet), sunnah, itihad, and isma (meaning consensus, or the “informal agreement of the community”). Claims of FGC, because not found in the Koran, are often based on hadith and FGC falls under “sunnah” (meaning optional and virtuous). Davis, *supra* note 1, at 532–535.

<sup>134</sup> Lewis, *supra* note 63; see also *infra* Section VII.

## VI. FGC PROPONENTS' REACTION TO WESTERN ERADICATION EFFORTS

¶31 Western feminists, the main party in the Western fight against FGC,<sup>135</sup> continue to face considerable resistance and negative feedback<sup>136</sup> in seeking to confront African cultures on the dangers of FGC. Western feminists and Western human rights activists are perceived as arrogant and condescending, and only interested in imposing their ideas onto African cultures.<sup>137</sup> Therefore, Westerners will make little, if any, progress, unless their message can be delivered in a more balanced, less judgmental, fashion.<sup>138</sup>

¶32 Western feminists, in their view, are not trying to replace patriarchal oppression with Western cultural oppression,<sup>139</sup> but are rather attempting to eradicate the procedure through education and empowerment.<sup>140</sup> In addition, Western feminists have fashioned alternatives to FGC that focus on maintaining the celebration of womanhood while eliminating the painful cutting. Proponents react to these solutions with the fear that the “abolition of the surgical element [of FGC] means . . . the abolition of the whole institution.”<sup>141</sup>

¶33 African feminists, although in accord with Western feminists that FGC is a harmful practice,<sup>142</sup> favor eliminating the practice based on “cultural rights<sup>143</sup> and self-

<sup>135</sup> But Western feminists are not the *only* group involved in the eradication of FGM; other groups include African NGOs, the World Health Organization (WHO), Rainbo, Path, and USAID. Conferences around the world, such as the World Conference on Women, World Conference on Human Rights, and the International Conference on Population and Development, also work towards the eradication of FGC. Additionally, countries have proclaimed support for the elimination of FGC, such as the Netherlands, Germany, and Denmark. U.S. Department of State, Report on Female Genital Mutilation [hereinafter Report on Female Genital Mutilation] (updated June 27, 2001), *available at* <http://www.state.gov/documents/organization/9424.pdf>.

<sup>136</sup> Westerners, most of whom claim that FGC is a violation of African women's sexuality or physiology, are considered judgmental and culturally insensitive by African women who “prefer to view female circumcision within a socio-economical and political context” rather than in the differing Westerner's context. Lewis, *supra* note 63.

<sup>137</sup> Davis, *supra* note 1, at 495. Eradication has been resisted by Kenyan women who believed that such eradication of FGC would “westernize, and therefore control them.” Lewis, *supra* note 63; *see also* Bowman, *supra* note 1 (supporting this viewpoint by stating that by protecting their traditions, women become “armed with a renewed sense of fear and hatred for the western world,” only building up more honor in the practice with the presence of western influence).

<sup>138</sup> Bowman, *supra* note 1. Additionally, “Muslim women are being told by their leaders that it is not the patriarchy or the elite which hinders them, but, rather, that the *evil culprit* is western ideology.” *Id.* (emphasis added). Muslims feel threatened by this *evil culprit* and want no part of such ideology. Such animosity presents challenges for establishing an open forum of communication between the Muslim and Western communities. *Id.*

<sup>139</sup> Lewis, *supra* note 63 (pointing to the focus of Western feminist rights discourse to compare FGC to oppressive practices that took place in the West, and have since been eradicated).

<sup>140</sup> *Id.*; *but see* Hanny Lightfoot-Klein, *Erroneous Belief Systems Underlying Female Genital Mutilation in Sub-Saharan Africa and Male Neonatal Circumcision in the United States: a Brief Report Updated*, Presented at the Third International Symposium on Circumcision (1994), *available at* <http://www.nocirc.org/symposia/third/hanny3.html> (noting that while African officials were under the impression that educated and mainstream Africans had abandoned FGC long ago and that the practice was only continuing in remote tribes, the scars of FGC, in fact, did not discriminate between the educated and uneducated peoples; furthermore, even amongst the most highly educated Africans, it was unknown that FGC was not practiced around the world).

<sup>141</sup> Lewis, *supra* note 63; *see also* Bowman, *supra* note 1 (quoting the late President of Kenya, Jomo Kenyatta, that “abolition . . . will destroy the tribal system.”).

<sup>142</sup> McGee, *supra* note 70, at 138. However, some African feminists, particularly those “suspicious of Western outsiders” attempting to eradicate the practice, continue to practice FGC “in the name of tradition.” *Id.*

determination.” While Western feminists tend to view FGC as a form of male societal control, female oppression, and subordination of women,<sup>144</sup> African feminists, particularly those who do not wish to eliminate FGC,<sup>145</sup> take the focus off subordination and place it on the cultural importance of FGC.<sup>146</sup> African feminists tend to view Western feminists’ “articulations of concern . . . as thinly disguised expressions of racial and cultural superiority and imperialism.”<sup>147</sup> African feminists contend that Western feminist discourse is ineffective at least partly because of Westerner’s failure to ask appropriate questions such as: what socioeconomic purposes does FGC serve, whether there are alternative ways of fulfilling the purposes of FGC, and whether domestic and international actors contribute to the continuation of FGC.<sup>148</sup>

¶34 FGC proponents feel that Western feminists, in their focus on health complications, fail to take into consideration other social, political, and economic issues linked to the health of African women.<sup>149</sup> Unlike their African counterparts, Western feminists lack a physical, political, cultural, and emotional relatedness to African women and children.<sup>150</sup> Although Western feminists continue to fight FGC using public education that focuses on health risks, religious myths, and legal repercussions of resisting the law,<sup>151</sup> there continues to be a demeaning, judgmental and imperialistic spin in their message.<sup>152</sup> As a reaction to the recent legacy of Western imperialism, African feminists have even advised Western feminists to modify their rhetoric to gain credibility within the populations their message is intended for.<sup>153</sup> Successfully eradicating the practice is unlikely if Western delivery continues to lack cultural empathy and understanding.

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<sup>143</sup> One description for the concept of cultural rights is the respect for and protection of cultural diversity and integrity. Ayton-Shenker, *supra* note 3. Cultural rights have also been described as the right to participate in cultural life, the right to education, the right to respect for identity, and the rights and freedoms of individuals to participate in cultural life. Platform – Caucus, *The Situation of Cultural Rights: Proposed Argumentation* (May 2005), Version 2, available at <http://www.unifr.ch/iiedh/droits-culturels/odc-documentation/odc-doc-synthese/DS2-situation-eng.pdf>. McGee, *supra* note 70, at 138.

<sup>144</sup> Amy Stern, *Female Genital Mutilation: United States Asylum Laws Are In Need Of Reform*, 6 AM. U.J. GENDER & L. 89, 103 (1997).

<sup>145</sup> African feminists who have wanted to end the practice have been unwilling to do so in order to maintain loyalty to their culture. Gillia, *supra* note 10, at 583, n.39. While they may have wanted to end the practice, they did not want to succumb to the purposes set forth by Western feminists. *Id.*

<sup>146</sup> Stern, *supra* note 144, at 103.

<sup>147</sup> Gillia, *supra* note 10, at 585.

<sup>148</sup> Lewis, *supra* note 63. This idea is embodied in the following quote: “to fight against genital mutilation . . . without questioning the structures and social relations which perpetuate this situation is like ‘refusing to see the sun in the middle of the day.’” *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* (suggesting that a sense of connectedness legitimizes African feminists desire to eradicate FGC).

<sup>151</sup> Ferguson & Ellis, *supra* note 113.

<sup>152</sup> Erin L. Han, *Legal and Non-Legal Responses to Concerns for Women’s Rights in Countries Practicing Female Circumcision*, 22 B.C. Third World L.J. (2002), available at [http://www.bc.edu/bc\\_org/avp/law/lwsch/journals/bctwj/22\\_1/05\\_FMS.htm](http://www.bc.edu/bc_org/avp/law/lwsch/journals/bctwj/22_1/05_FMS.htm) (explaining that “African feminists object to the demeaning and imperialistic way in which some Western activists have approached of FGC”).

<sup>153</sup> Julie Dimauro, *Toward a More Effective Guarantee of Women’s Human Rights: A Multicultural Dialogue in International Law*, 17 WOMEN’S RTS. L. REP. 333, 339 (1996).

## VII. WHAT SHOULD BE DONE ABOUT FGC?

¶35 Arguing about which side is right – FGC opponents or proponents – is futile. Rather, Westerners must reconcile widespread resistance<sup>154</sup> with Western concern by focusing on women’s health and departing from cultural judgment.<sup>155</sup> It is only then that a viable solution will surface. One side entirely conceding to the other is unlikely. This notion is at least partly exhibited by the continued strong following to maintain the practice<sup>156</sup> – even by Muslim feminists who oppose the tradition but understand its significance.<sup>157</sup>

¶36 International<sup>158</sup> and local laws, codes, and courts addressing discrimination do exist,<sup>159</sup> but they have generally proven ineffective. The few countries that have drafted FGC prohibitory law tend to be very lax (sometimes to the point of non-existent) in enforcing such law.<sup>160</sup> Not only are women hesitant to seek protection under the law, but cultural norms prevent females from feeling comfortable stepping forward to discuss FGC.<sup>161</sup> Nonetheless, some countries that produced local law prohibiting FGC have successfully enforced such law, following through by preventing discrimination against women and children and punishing those who violate anti-FGC law.<sup>162</sup> Unfortunately, there are indications that local laws in some countries have driven the practice underground.<sup>163</sup>

¶37 The U.N. has created numerous international mechanisms that can be used to tackle FGC. Such laws include the Convention on the Rights of the Child (“CRC”),<sup>164</sup> the

<sup>154</sup> See Han, *supra* note 152 for an assertion that feminists know the practice is wrong yet continue to practice it out of a resistance of Western thought. See also Razor’s Edge, *supra* note 65 (claiming that FGC practicing communities are resistant to the intervention of the international community when it attempts to eliminate or outlaw the practice through the criminalization of a “vital part of their culture” and that “resistance extends to the national level, with resentment developing against members of other ethnic communities attempting to eradicate the practice.”); Sally Baden, *The Position of Women in Islamic Countries: Possibilities, Constraints, and Strategies for Change* (Sept. 1992), Bridge Institute of Development Studies, available at <http://www.bridge.ids.ac.uk/reports/R4%20Women%20Islam%20c.doc> (stating that FGC is practiced not only by Muslims but also Catholics, Protestants, Copts and Animists).

<sup>155</sup> Davis, *supra* note 1, at 497.

<sup>156</sup> FGC is practiced in some Asian and North and Central African countries, as well as by immigrant groups (mainly Muslim) in some Western countries. According to the United Nations, between two and three million women and girls worldwide continue to be subjected to FGC annually. Mona Ghuneim, *VOA News: UN Steps up Effort to End Female Genital Mutilation*, US FEDERAL NEWS, Aug. 10, 2007.

<sup>157</sup> Even amongst the group that wants to see FGC eradicated, not everyone agrees that outlawing the practice is the best strategy. Davis, *supra* note 1, at 496.

<sup>158</sup> Most international legal work has been done through the UN, bringing FGC into the view of a global context. Bowman, *supra* note 1.

<sup>159</sup> At least some of these laws were passed in response to identifying that women subjected to FGC were at an increased risk to HIV. Davis, *supra* note 1, at 494.

<sup>160</sup> Countries with weakly implemented local law include Tanzania, Senegal, and Guinea. Report on Female Genital Mutilation, *supra* note 135.

<sup>161</sup> *Id.*

<sup>162</sup> For a description of international law that may be used to disallow FGC, see *infra* Section VII.

<sup>163</sup> Report on Female Genital Mutilation, *supra* note 135.

<sup>164</sup> Adoption of a Convention on the Rights of the Child, U.N. GAOR 3d Comm., 44th Sess., Agenda Item 108, at 12, U.N. Doc. A/44/736 (1989). The Convention put the principles in the Declaration of the Rights of the Child into legally binding terms and like the Universal Declaration (see *infra* note 166), lacks specific reference to FGC. Wellerstein, *supra* note 123, at 122-124. The focus of the Convention is on protecting children’s health and reducing infant and child mortality. Wood, *supra* note 56. This Convention is one of the most widely ratified conventions in history, with only two countries (Somalia and

Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”),<sup>165</sup> the Universal Declaration of Human Rights (“Universal Declaration”),<sup>166</sup> the International Covenant on Civil and Political Rights,<sup>167</sup> and the Convention Against Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>168</sup> Other instruments include the African Charter on Human and People’s Rights,<sup>169</sup> the

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the United States) having not signed it. Coomaraswamy, *supra* note 5, at 508. The Convention specifically mandates that customary and religious law and practice must heed to international standards, consequently precluding all aspects of customary and religious law and practice that violate the rights of child. *Id.*

<sup>165</sup> Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 180, U.N. GAOR, 35th Sess., Agenda Item, U.N. Doc. A/34/180 (1980). CEDAW is considered the most promising U.N.-based effort that focuses specifically on gender-based violations of human rights. Lewis, *supra* note 63. CEDAW is marked as the first document to specifically address and prohibit discrimination against women. *Id.* This instrument requires the elimination of discrimination against women and the abolishment of all existing laws, regulations, customs, and practices that constitute discrimination against women. For arguments against the effectiveness of CEDAW, see Wellerstein, *supra* note 122, at 118 (CEDAW fails to meet the needs of the international community by not banning FGC, providing strong protection against dangerous practices, creating enforceable international law, and not implementing financial support). See also “Women’s Rights: First Case Under New UN Treaty” noting that “CEDAW rarely changes behavior directly or immediately” but that it does serve to undercut discrimination gradually by effecting public consciousness and “legitimizing the demands of groups fighting for equal rights.”

<sup>166</sup> The Universal Declaration mandates the “rights to security of person, to freedom from torture and other cruel and unusual treatment, and to privacy,” as well as the right to freedom of thought, conscience and religion. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948); *but see* Wellerstein, *supra* note 122, at 120 (noting that the Universal Declaration protects the right to freedom of religion, which creates a conflict between the right to freedom of religion and the right to be free from torture). The Universal Declaration is considered an “excellent indicator of international consensus on human rights.” Ayton-Shenker, *supra* note 3.

<sup>167</sup> International Covenant on Civil and Political Rights, Dec 16, 1966, S. Exec. Doc. E, 95-2 (1978), 999 U.N.T.S. 171 (1978). The International Covenant on Civil and Political Rights is the document that succeeded the Universal Declaration on Human Rights. Both documents promise the freedom of religion. However, the Human Rights Committee, which interprets and applies the International Covenant, has declared that FGC is unequivocally inconsistent with international human rights and cannot be justified. In its interpretation of the Covenant, the Human Rights Committee orders that “in States parties where the practice of genital mutilation exists, information on its extent and on measures to eliminate it should be provided.” General Comment No. 28, Equality of Rights Between Men and Women (Article 3), 29 March 2000, CCPR/C/21/Rev.1/Add.10. This falls closely in line with the General Comments of the Right to the Highest Attainable Standard of Health from the Committee on Economic, Social, and Cultural Rights which states that, “there is a need to adopt effective and appropriate measures to abolish harmful traditional practices . . . including . . . female genital mutilation” and that “States are also obliged to . . . prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation . . . .” General Comment No. 14, The Right to the Highest Attainable Standard of Health (Article 12), 11 August 2000, E/C.12/2000/4, P 9 (Jul. 4, 2000), *available at* <http://www.unhchr.ch/tbs/doc.nsf/0/40d009901358b0e2c1256915005090be?Opendocument>.

<sup>168</sup> Torture is defined as “any physical or mental act that is intentionally inflicted for any discriminatory reason.” Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984).

<sup>169</sup> African Charter on Human and People’s Rights, OAU Doc. CAB/LEG/87/3 rev. 5 (1982), *available at* <http://www.africa-union.org/root/au/Documents/Treaties/Text/Banjul%20Charter.pdf>. Stipulating in the preamble “freedom, equality, justice, and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples” and “taking into consideration the virtues of [the African States] virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights.” Part I, Chapter I of the Charter states that: “every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status” (art. 2); torture or inhuman treatment is prohibited (art. 5); every individual shall have the right to enjoy the best attainable state of physical and mental health (art. 16); elimination of discrimination against women and protection of the rights of women and children (art. 18); and that all peoples shall be equal (art. 19).

Declaration on the Elimination of Violence against Women,<sup>170</sup> and the Convention on the Rights of the Child.<sup>171</sup> Courts positioned to rule on matters related to FGC include the African Court on Human and People's Rights<sup>172</sup> and the International Court of Justice.<sup>173</sup> Additionally, two U.N. agencies are trying to end the practice of FGC in Africa by launching a multi-million dollar program to "encourage communities, rather than nations, to abandon the practice."<sup>174</sup> The program's goal is to "reduce the number of [FGC] cases by forty percent in sixteen African nations by 2015."<sup>175</sup>

¶38

Although human rights arguments are plentiful, approaching the eradication of FGC by simply arguing human rights violations, although satisfying to the Western world, does not hold up universally as a result of weak and ineffective enforcement mechanisms under international human rights law. Certain human rights, while considered fundamental by a large number of nations, "when stated specifically and given concrete form . . . are incompatible with local traditions and culture and are therefore unacceptable to local governments."<sup>176</sup> The fact that FGC practitioners are private citizens, that the procedure is performed with "consent" from the parents of minor girls, and that FGC is performed by females on other females, creates tension in relying on arguments that focus solely on human rights violations.<sup>177</sup> Rather than relying

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Part I, Chapter II of the Charter states that the responsibilities of the African Commission Authority include ensuring the protection of human and peoples' rights under the conditions laid down by the Charter on Human and Peoples' Rights.

<sup>170</sup> Declaration on the Elimination of Violence Against Women, GA Res. 48/104, U.N. Doc. A/48/49 (1993). The Declaration has been minimally enforced. Violence against women is defined as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women." Art. 1.

<sup>171</sup> Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 61st plen. mtg., U.N. Doc. A/RES/44/25 (Nov. 20, 1989). In Article 24, the Convention recognizes the right of the child "to the enjoyment of the highest attainable standard of health" and orders that Parties to the Convention "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

<sup>172</sup> The African Court on Human and People's Rights is the regional court that rules on African Union states' compliance with the African Charter on Human and Peoples' Rights. The Court is currently being merged with the African Court of Justice. The Court has jurisdiction to act both in a judiciary and an advisory capacity related to cases regarding the African Commission on Human and Peoples' Rights, a State Party that filed a complaint to the Commission or received a complaint from the Commission, a State Party whose citizen is a victim of a human rights violation, and African Intergovernmental Organizations for issues concerning this Court. *Presentation, Analysis and Commentary: The Protocol to the African Charter on Human and Peoples' Rights, Establishing the Court*, The African Court on Human and Peoples' Rights (2000), available at <http://www.apt.ch/africa/African%20Court.pdf>.

<sup>173</sup> The International Court of Justice, also known as the "World Court," per the UN Charter, Article 93, rules on contentious issues (limited to states as parties) and advisory opinions. All 192 UN members are automatically parties to the Court's statute and non-UN members may become parties under the Article 93(2) procedure. Once a state is a party to the Court's statute, it is entitled to participate in cases before the Court. However, just because a state is a party to the Court, does not mean that the Court has jurisdiction over disputes involving those parties. Under Art. 36 of the Statute of the International Court of Justice, nation-states are only subject to the Court's jurisdiction on the basis of consent. Statute of the International Court of Justice, June 26, 1945, art. 36, P 3, available at <http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm>. Such consent may be given in advance of a dispute, either by treaty or by unilateral declaration filed with the Court. Frederic L. Kirgis, *The World Court: Which Court Is It?*, The American Society of International Law (May 3, 2005), available at <http://www.asil.org/insights/2005/05/insights050503.html>.

<sup>174</sup> Ghuneim, *supra* note 156.

<sup>175</sup> *Id.*

<sup>176</sup> Trangsrud, *supra* note 12.

<sup>177</sup> Lewis, *supra* note 63.

exclusively on human rights arguments, a solution must strike a balance between cultural integrity and international human rights.<sup>178</sup> Furthermore, some human rights arguments are couched in terms that could support the continued practice of FGC.<sup>179</sup> Consequently, strictly relying on human rights arguments will likely prove to be an unsuccessful strategy.

¶39

To make an impact on those cultures practicing FGC, change must come from within and reflect an understanding of FGC. Western women, although possessing valuable educational resources, have not been effective, primarily because of poor delivery, rather than poor information.<sup>180</sup> Furthermore, banning the practice via legal instruments is not the answer.<sup>181</sup> Although numerous legal codes prohibit discrimination against women and children, torture, and the like, efforts to eradicate the practice will more likely arise from a shift in attitudes and beliefs rather than a legal resolution. Some scholars go so far as asserting that culture may change the law, but law is not going to change culture.<sup>182</sup> There is a sense of pride associated with performing FGC; it is not *just* a practice, but rather a means of feeling connected to one's community.<sup>183</sup> Change is more likely to take place when practicing women are given the opportunity to make their own decisions, rather than being told what to do.<sup>184</sup>

<sup>178</sup> Trangsrud, *supra* note 12.

<sup>179</sup> See the Universal Declaration of Human Rights, art. 18:

“Everyone should have the right to freedom of thought, conscience, and religion. The right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief of his choice.” (emphasis added)

Coomaraswamy, *supra* note 5, at 502, n.92. See also the U.N. Declaration on the Elimination of Religious Intolerance and Discrimination passed by the U.N. General Assembly which asserts that “international law protects the manifestations of religious belief related to worship, . . . articles for rites and customs, . . . and communicating with others.” U.N. Declaration on the Elimination of Religious Intolerance and Discrimination, G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. 51, U.N. Doc. A/36/51 (1981).

Coomaraswamy, *supra* note 5, at 503. However, discrimination against women is not protected under religious worship laws. *Id.* But see the Covenant on Civil and Political Rights, *supra* note 167, (a binding treaty and one that supercedes the declarations) which, according to the Human Rights Committee, clearly outlaws the practice. In addition, the Committee on the Elimination of Discrimination against Women (CEDAW) (1981), which oversees the Convention on the Elimination of All Forms of Discrimination Against Women, “identified FGC as a form of discrimination and declared female circumcision to be a clear violation of human rights.” Razor’s Edge, *supra* note 65. Other conventions address the practice of FGC as well, such as the Convention of the Rights of the Child, which outlawed harmful traditional practices. *Id.*; see also *supra* note 173.

<sup>180</sup> Those practicing FGC believe that Westerners are trying to impose Western values, which are heavily resisted against in these cultures. When FGC was compared to sati, it was noted that: “As with FGM, little disagreement existed that the modern practice should be discouraged. But people did call into question the arrogance of the central government and feminists in passing judgment on the beliefs and practices of a community.” Coomaraswamy, *supra* note 5, at 495.

<sup>181</sup> “A ritual that has survived for millennia is not likely to disappear because it is not illegal.” Cynthia Fernandez-Romano, *The Banning of Female Circumcision: Cultural Imperialism or a Triumph for Women’s Rights?*, 13 TEMP. INT’L & COMP. L.J. 137, 160 (1999). Complete prohibition may even lead the practice to go underground. *Id.*

<sup>182</sup> LAYLA M. SHAABAN & SARAH HARBISON, REACHING THE TIPPING POINT AGAINST FEMALE GENITAL MUTILATION, THE LANCET (2005), [http://www.popcouncil.org/pdfs/frontiers/journals/lancet\\_fgc2005.pdf](http://www.popcouncil.org/pdfs/frontiers/journals/lancet_fgc2005.pdf). However, clearly, changes have transpired as a result of reforms in the legal system, such as societal perceptions toward the oppression of women, child abuse, and discrimination of many forms (racial, age, gender, etc.).

<sup>183</sup> Anaya, *supra* note 100, at 22.

<sup>184</sup> Coomaraswamy, *supra* note 5, at 511.

¶40 Nevertheless, as evidenced in the recent case of *Refah Partisi v. Turkey*,<sup>185</sup> international courts have been useful in prohibiting some actions that are inconsistent with international laws and rights.<sup>186</sup> However, these court actions have generally resulted in inadequate persuasiveness and inefficient implementation, resulting in a lack of effectiveness in dealing with FGC.<sup>187</sup> “Mere legal rules, without affirmative and meaningful support, can be undermined by power, culture, or both.”<sup>188</sup> On its own, international law will not bring about the eradication of FGC until individual countries enforce the law and implement their own laws that support such international prohibition.<sup>189</sup> Where local law overlaps international laws and codes, and where local state governments apply international law to their own individual legislation, there is a much greater likelihood that FGC can be stopped.<sup>190</sup> Again, this process must be done with great sensitivity and respect, and absent excessive imposition of Western cultural norms.<sup>191</sup> “Change can only occur if the global community embraces the laws of individual nations, works with those laws, and coordinates them with international legislation.”<sup>192</sup>

¶41 Fortunately, such evolution is in the works. Prominent men and women from FGC-practicing nations are encouraging countries around the world to demand that governments, international bodies, and NGOs take more concentrated action to end the practice. Proof of such progress was reflected in the successful turnout of hundreds of

<sup>185</sup> *Refah Partisi (Welfare Party) and Others v. Turkey*, 35 Eur. H.R. Rep. 56 (2002).

<sup>186</sup> See *id.*, where the European Court of Human Rights (“ECHR”) upheld the ban of a political party that advocated legal pluralism with the intention of introducing elements of Islamic law into the Turkish legal order, eventually dividing Turkish society into several religious orders, and requiring individuals to choose which order he or she wanted to be subjected to. This particular court concentrates on the protection of individual freedoms (e.g., religion) as essential to liberty and the law. Patrick Macklem, *Militant Democracy, Legal Pluralism, and the Paradox of Self-Determination*, 4 INT’L J. CONST. L. 488, 489 (July 2006). Due to Turkey’s constitutional commitment to secularism calling for a “radical separation between church and state,” the court held that Refah was inconsistent with Turkey’s ideals. *Id.* at 507. Although respondents argued that their freedom of association guaranteed by Article 11 of the ECHR was being violated, their claim was unsuccessful. Refah’s prohibition supported Turkey’s democratic society, pursued a legitimate aim, and guaranteed freedom of association. *Id.* at 508. Following the initial case, a grand chamber on the Court held that “state authorities possess a right to protect state institutions from an association that, through its activities, jeopardizes democracy.” *Id.* But see *United Communist Part of Turkey (TBKP) and Others v. Turkey*, 1998-I Eur. Ct. H.R. 1, where the ECHR held that Article 11 was violated when the Government of Turkey dissolved the United Communist Party of Turkey. The case originated when TBKP was accused of having sought to establish the domination of one social class over others, supporting the adoption of Islamic law, and incorporating the word “communist” into its name on the basis of its constitution and “programme.” App. No. 133/1996/752/951, 26 Eur. H.R. Rep. 121 (1998). TBKP was dissolved before actually commencing any political activities; therefore, simply because TBKP chose to affiliate itself with communism in its supporting documents, did not provide reason to entail the party’s dissolution. *Id.* By satisfying the requirements of democracy, namely supporting political pluralism, universal suffrage, and freedom to take part in politics, TBKP’s objectives did not provide any justification for hindering its political pursuits. In its holding, the Court emphasized the importance of the right of freedom of association as well as the freedom of expression, both of which were breached when the party was forced to dissolve. *Id.*

<sup>187</sup> Passing the law is one hurdle, while enforcing compliance is another. Yetunde Arebi, *Female Circumcision – The Good, the Bad and the Ugly?*, VANGUARD (NIGERIA), Aug. 21, 2007.

<sup>188</sup> Nancy E. Dowd, *Law, Culture, and Family: The Transformative Power of Culture and the Limits of Law*, 78 CHI.-KENT L. REV. 785, 786 (2003).

<sup>189</sup> Wellerstein, *supra* note 122, at 120-121.

<sup>190</sup> *Id.* at 132.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

African activists at a 2003 “zero tolerance” conference. Further, UNICEF hopes to eliminate the practice by 2010.<sup>193</sup>

¶42 Education, for both men and women, as proven from successes in Kenya and Senegal, is a huge factor in determining whether the practice will ever be eradicated. It is imperative that these educational outreach activities be designed in a culturally appropriate manner with a focus on transforming attitudes and beliefs about women’s bodies, sexuality, and role in society, as well as a reinterpretation of religion and traditions of initiation.<sup>194</sup> Support must come from religious leaders, scholars, activists, and health care providers who are dedicated to the development of human rights, women’s rights, and child development.<sup>195</sup>

¶43 Often, those who support the practice are unaware of its dangers.<sup>196</sup> Within the realm of education, religious myths must be discredited to expose the reality that Islam does not support FGC.<sup>197</sup> To reduce women’s fear of being unmarriageable if they reject the practice, it is critical that men support FGC’s eradication to encourage women, particularly mothers, to feel confident about declining the practice. Men abandoning their desire to seek mutilated wives would likely be powerful and influential enough to end the practice.<sup>198</sup>

#### VIII. ALTERNATIVES

¶44 One alternative to an outright ban of FGC is clinicalizing the practice so that it is performed under sanitary and safe conditions.<sup>199</sup> This would likely entail training midwives and doctors to perform the procedures in hospitals, as well as using anesthesia and sterile instruments.<sup>200</sup> However, although clinicalizing may avoid medical risks by utilizing qualified medical personnel and guarding against the most serious side effects, it communicates a sense of acceptance, thus perpetuating FGC.<sup>201</sup>

¶45 Another alternative to FGC, and one that Kenya implemented, is maintaining the ceremonial rite of passage through a modification (rather than abandonment) of the practice. “Circumcision through words” was initiated from the Kenyan group Maedneleo Ya Wanawake Organization (“WYWO”) whose mission was to replace cutting with non-cutting rituals. Such “initiation without cutting” programs in Kenya have been a huge success, integrating counseling and education of young women with attention to health

<sup>193</sup> Ben-Ari, *supra* note 126.

<sup>194</sup> Trangsrud, *supra* note 12.

<sup>195</sup> *Id.*

<sup>196</sup> Wellerstein, *supra* note 122, at 128.

<sup>197</sup> *Id.* at 129-130.

<sup>198</sup> Burkina Faso: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC) [hereinafter *Burkina Faso Report on FGC*], Office of the Senior Coordinator for International Women’s Issues (June 1, 2001), available at <http://www.state.gov/g/wi/rls/rep/crfgm/10047.htm>; see also *infra* note 232 and accompanying text for an example of men influencing the eradication of FGC in Senegal.

<sup>199</sup> Somalia has clinicalized FGC to protect girls from the unsanitary conditions of genital surgeries. Fernandez-Romano, *supra* note 181, at 159. Such clinicalization in Somalia is limited to sunna circumcision and pricking, which under these proper conditions, are not thought to harm the child. *Id.*

<sup>200</sup> Trangsrud, *supra* note 12.

<sup>201</sup> In fact, medicalization has tended to increase parents’ interest in FGC. Davis, *supra* note 1, at 497. The World Health Organization believes that the medicalization of all forms of FGC should be prohibited by laws and professional codes of ethics; see also Trangsrud, *supra* note 12 (an avoidance of infection does not preclude against physical or psychological side effects).

issues like human sexuality, hygiene, self-esteem and peer pressure. The initiation is marked with a celebration, rather than a cut, where the girls receive gifts and extra respect for the day.<sup>202</sup>

¶46 Because of the economic dependency some cultures have on the continuation of the practice, a possible solution is to provide sources of additional income, new jobs, or government funding to those who financially benefit from FGC.<sup>203</sup> However, providing practitioners with an alternative means of livelihood must be coupled with addressing community demand; if the demand remains, the need for practitioners will continue to exist.<sup>204</sup> Another economic approach, although looked down upon by African scholars, would be for the United States to make loans to African states conditional on action being taken to fight FGC.<sup>205</sup>

¶47 Western efforts, while providing an arena for change, have not been overwhelmingly effective because of a gross failure to put solutions within the proper cultural and political contexts.<sup>206</sup> The common thread in successful efforts to eradicate FGC is activism by African women. Their legitimacy and credibility is linked with an inherent connection to those who have undergone FGC and they are able to identify with and connect to the same cultural influences.<sup>207</sup> This power of connectedness is reflected in the efforts of Alice Walker, an African American feminist who unequivocally opposes FGC,<sup>208</sup> and who is perceived as the “ideal ambassador between the cultural divide of white Western feminists and African feminists.”<sup>209</sup>

#### IX. SUCCESS IN ERADICATING VARIOUS HARMFUL PRACTICES AND SUCCESS IN ERADICATING FGC

¶48 Both domestically and abroad, various harmful practices have experienced successful eradication. For example, the prevalence and acceptance of child abuse has severely decreased over the past several decades and is now met with scorn, resistance, and condemnation. When child abuse was not challenged, and was more or less an accepted form of discipline and punishment of children,<sup>210</sup> so was the general “widespread acceptance of physical punishment as an appropriate disciplinary technique.”<sup>211</sup> In addition, at one time in the United States children were regarded as property with economic value (e.g., as saleable property or as laborers); consequently, children suffered at the hands of child abuse as a result of their primarily economical and

<sup>202</sup> Wellerstein, *supra* note 122, at 136; *see also* Friedenthal, *supra* note 12, at 147-149.

<sup>203</sup> Friedenthal, *supra* note 12, at 147 (“The opportunity for these women to gain respectable, alternative employment, such as community health care work, has served to minimize resistance to change. Women in these positions often travel to educate other villages regarding issues such as pre-natal care, sexually transmitted diseases, and the harmful effects of female genital cutting.”).

<sup>204</sup> Shaaban, *supra* note 182.

<sup>205</sup> Coomaraswamy, *supra* note 5, at 492.

<sup>206</sup> Lewis, *supra* note 63.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> Marian Marion, *Primary Prevention of Child Abuse: The Role of the Family Life Educator*, Family Relations (Oct. 1982), available at <http://links.jstor.org/sici?sici=0197-6664%28198210%2931%3A4%3C575%3APPOCAT%3E2.0.CO%3B2-C&size=LARGE>.

<sup>211</sup> Dr. Frederick C. Green, *Corporal Punishment and Child Abuse: Why Do We Continue to Sanction Child Abuse in the Classroom?*, The Humanist (Nov./Dec. 1988), available at <http://www.nospank.net/green.htm>.

financial social value.<sup>212</sup> Now, child abuse is less prevalent because of widespread education<sup>213</sup> on the harmful effects of physical, sexual, and verbal abuse of children, as well as the adoption of laws aimed at thwarting violence against children.<sup>214</sup> However, although laws and numerous anti-abuse organizations contribute to the lessening prevalence of child abuse, the fact that most abuse occurs in private quarters raises barriers to its detection.

¶49 Child abuse has been framed as a community issue with the goal of shifting community acceptance of violence in general.<sup>215</sup> The media has also played a large role in the past two decades in changing societal attitudes towards child abuse.<sup>216</sup> Like smoking, people still engage in child abuse in the United States, but mainstream acceptance towards its practice has been considerably altered due to widespread education about its harmful affects, a change in attitude about violence, and major organizations publicly condemning such behavior.

¶50 Another harmful occurrence in American history that was seemingly tolerated by the affected community was the hanging of Salem “witches” in the seventeenth century.<sup>217</sup> Even though the Salem population continued believing in the existence of witchcraft in their community and supported its punishment, retribution for witchcraft ended one year after it began primarily due to the efforts of Massachusetts Bay Colony Governor Phips. Although Phips established the very court used to punish those accused of witchcraft, he ended the practice by pardoning the final eight people sentenced to death, discharging every prisoner, and issuing a general pardon to all individuals under suspicion.<sup>218</sup> In other words, the same court and individual that began the Salem Witchtrial massacres was also responsible for its closure.

¶51 The eradication of Chinese footbinding first began in the mid-1600s under the control of the Manchus dynasty, yet was received with little support and continued to be perceived as a beautiful, albeit illegal, act.<sup>219</sup> In 1895, the first anti-footbinding society began in Shanghai.<sup>220</sup> The group also supported women’s education, which footbinding

<sup>212</sup> Joyce Ann Mercer, *Legal and Theological Justice for Abused Adolescent Girls*, 9 J.L. & RELIGION 451, 456-457 (1992).

<sup>213</sup> See generally National Child Abuse Statistics, Childhelp (May 2005), available at [http://www.childhelp.org/uploads/Gl/ci/GlciCz0RJ5B-BqEfr8Bh\\_w/STATS-2006.pdf](http://www.childhelp.org/uploads/Gl/ci/GlciCz0RJ5B-BqEfr8Bh_w/STATS-2006.pdf).

<sup>214</sup> All 50 states “have enacted laws defining child abuse and maltreatment, determining when outside intervention is required, and establishing administrative and judicial structures to deal with maltreatment when it is identified.” [http://www.policyalmanac.org/social\\_welfare/child\\_abuse.shtml](http://www.policyalmanac.org/social_welfare/child_abuse.shtml). In addition, The Child Abuse and Prevention Treatment Act (CAPTA) was created to provide federal funding to states in support of prevention, assessment, investigation, prosecution, and treatment activities to decrease the prevalence of child abuse. Child Welfare Information Gateway, About CAPTA: A Legislative History Factsheet (2004), available at <http://www.childwelfare.gov/pubs/factsheets/about.cfm>.

<sup>215</sup> Nina A. Kohn, *Second Childhood: What Child Protection Systems Can Teach Elder Protection Systems*, 14 STAN. L. & POL’Y REV. 175, 199 (2003).

<sup>216</sup> Kathleen M. Heide, *Six Concentrated Areas to Reduce Juvenile Violence in the 21st Century*, 1 BARRY L. REV. 143, 156 (2000).

<sup>217</sup> Martha M. Young, *The Salem Witch Trials 300 Years Later: How Far Has the American Legal System Come? How Much Further Does It Need to Go?*, 64 TUL. L. REV. 235, 237-240 (Nov. 1989).

<sup>218</sup> Some scholars believe Phips may have been influenced by judges who were appalled by the practice and ultimately resigned from their judgeship. Michael Tonry, *Rethinking Unthinkable Punishment Policies in America*, 46 UCLA L. REV. 1751, 1784 (1999).

<sup>219</sup> Hutchins, *supra* note 52.

<sup>220</sup> BBC.CO.UK, Chinese Foot Binding (Oct. 2003), <http://www.bbc.co.uk/dna/h2g2/A1155872>.

largely interfered with.<sup>221</sup> To counteract the obstacle of marriageability, society members prohibited their children from marrying women with bound feet and registered their children's names to the society for mates to be paired together.<sup>222</sup>

¶52 By 1911, Chinese footbinding had been largely eradicated with the accession to power of Sun Yat-Sen, a Chinese revolutionary considered by some to be the “most important figure of Chinese history in the twentieth century.”<sup>223</sup> The nationalist revolution, along with a modern education campaign teaching the advantages of natural feet, as well as the rise of many natural-foot societies successfully brought footbinding to an end.<sup>224</sup>

¶53 Despite its persistence in many cultures, eradication of FGC has been successful in various countries. Although its original ban against FGC was overturned, Egypt subsequently reinstated its ban against FGC in 1997.<sup>225</sup> This was done with the support of Egypt's Supreme Administrative Court, which ruled that Islam did not require the practice.<sup>226</sup> More valuable than legal reform have been the efforts of programs that focus on both education, in general, as well as on the eradication of FGC.<sup>227</sup> Village volunteers enlisted by the organizations are responsible for soliciting and preserving pledges from villagers stating that FGC will not be practiced on their daughters.<sup>228</sup>

¶54 In Senegal, a huge shift began in 1991 when an American woman created an instrumental NGO called Tostan,<sup>229</sup> a six-part education program directed towards informing women about hygiene, literacy, and other issues.<sup>230</sup> Education made a huge impact on the attitudes and beliefs of Senegalese women, and major change was sparked when men supported the practice's eradication. Public declarations made by influential males<sup>231</sup> ended the practice of FGC, which was celebrated with music, dancing, and

<sup>221</sup> At the time when footbinding was prevalently practiced, women were considered second-rate citizens, undeserving of independence and education. *Id.* In addition, considering the immobilization created by footbinding, women found themselves handicapped at home, and consequently unable to seek out educational opportunities. *Id.* In addition, women with bound feet were incapable of venturing far without assistance. *Id.* Such women were unable to stray or run from beatings, and were consequently, quite controlled by their husbands. *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> Hutchins, *supra* note 52; Richard Hooker, *Modern China: Sun Yat-sen* (last updated June 1999), World Civilizations, available at <http://wsu.edu/~dee/MODCHINA/SUN.HTM>.

<sup>224</sup> *Bound to be Beautiful – Foot Binding in Ancient China* (2003), Frank H. McClung Museum at the University of Tennessee, available at <http://mcclungmuseum.utk.edu/newarchives/footbinding/index.html>.

<sup>225</sup> Sherifa Zuhur, *The Mixed Impact of Feminist Struggles in Egypt During the 1990s* (March 2001), Middle East Review of International Affairs, available at <http://meria.idc.ac.il/journal/2001/issue1/jv5n1a6.html>.

<sup>226</sup> Friedenthal, *supra* note 12, at 142 (FGC is prohibited, even if both the parents and child agrees to it).

*But see* Michael Slackman, *Voices Rise in Egypt to Shield Girls from an Old Tradition*, N.Y. TIMES, Sept. 20, 2007, at A1 (stating that the ban “allowed exceptions in cases of emergency, a loophole critics describe as so wide that it effectively rendered the ban meaningless.”).

<sup>227</sup> Elizabeth A. Syer, *The Status of the Crusade To Eradicate Female Genital Mutilation: A Comparative Analysis of Laws and Programs in the United States And Egypt*, 22 PENN ST. INT'L L. REV., 843, 858 (2004).

<sup>228</sup> *Id.* *But see* Zuhur, *supra* note 225 (stating that despite the efforts of the FGM's Task-Force attempting to show that FGC is a form of violence against women, the “procedure will apparently continue so long as Egyptians believe that it makes their daughters more marriageable and moral.”).

<sup>229</sup> The word Tostan means “breakthrough.” Wellerstein, *supra* note 122, at 138.

<sup>230</sup> Wellerstein, *supra* note 122, at 138.

<sup>231</sup> On November 20, 1997, the President of Senegal, Abdou Diouf, proclaimed that Senegal was to follow the eradication of FGC set forth by the women of Malicounda and subsequently, began drafting a ban in 1998 of legislation banning FGC. Wellerstein, *supra* note 122, at 139. In early 1999, the Parliament of

speeches asserting respect for women's rights and children's education.<sup>232</sup> Senegal has experienced great success since its 1997 inception of FGC condemnation and has promoted the sanctioning of medical professionals who participated in the practice.<sup>233</sup> In 2003, 202 villages announced their decision to abandon FGC, including a proclamation from a highly respected Imam that FGC should be abandoned by *all* Muslims.<sup>234</sup>

¶55 Nigeria<sup>235</sup> is another exceptional success story. Although the country initially signed the CEDAW in 1985, its government refused to take legal action. However, events came full circle in the 1990s with the adoption of state laws that banned FGC and mandated the fining and imprisonment of individuals who continued to conduct the procedure.<sup>236</sup> Significant effort and education contributed to this change, including NGO programs in Nigeria devoted to creating awareness and empowering females. U.N. CEDAW handbooks translated into Nigerian languages were distributed amongst the different communities and a collaborative national criminal justice system was fully committed to the prohibition of FGC.<sup>237</sup>

¶56 Moreover, Burkina Faso is a prime example of education making an impact on the prevalence of FGC in a resistant community. Through a government-sponsored educational campaign to end FGC,<sup>238</sup> the once taboo practice became part of community dialogue.<sup>239</sup> This campaign has worked towards being proactive in educating the Burkina Faso populace by providing information sessions about the harmful effects, training the people to disseminate this information amongst colleagues, and directing people to collect information on excisors' whereabouts.<sup>240</sup> Nevertheless, although there has been a decrease in prevalence and an increase in the likelihood of using sterile equipment, the practice continues, at least partly due to a lack of financial resources to sustain eradication efforts.<sup>241</sup> The populace continues to sustain the procedure, while placing less emphasis on and sometimes even neglecting, the traditional rites and celebration.<sup>242</sup>

¶57 The change in Cote d'Ivoire exemplifies how law can make an impact on the eradication of FGM. The country passed a law in 1998 punishing those who "harm the integrity of the genital organ of a woman by complete or partial removal, excision,

Senegal approved this legislation. *Id.*

<sup>232</sup> Friedenthal, *supra* note 12, at 148–149; *but see* Davis, *supra* note 1, at 494–495 (reporting that Mountaga, the spiritual leader of northern Senegal's Tou-cou-leur people, vowed death over support of an FGC ban and communicated this defiance by circumcising 120 girls).

<sup>233</sup> Friedenthal, *supra* note 12, at 149. Additionally, as of early 2006, thirty percent of those communities once practicing FGC have followed in these same declarations to end the practice of FGC in their villages.

<sup>234</sup> Ending Female Genital Cutting in Dialacoto – A Celebration of Life and Culture, Tostan, [http://www.tostan.org/news-sept\\_21\\_03.htm](http://www.tostan.org/news-sept_21_03.htm)

<sup>235</sup> Nigeria accounts for around 20 percent of West Africa's population, making it Africa's most populous country. Additionally, six children, on average, are raised per one woman. Friedenthal, *supra* note 12, at 149.

<sup>236</sup> *Id.* at 151.

<sup>237</sup> Nigeria has enacted the Female Genital Mutilation Elimination Day as well as created a Federal Ministry of Women Affairs and Young Development, a National Centre for Women's Development, a Women Crisis Centre, a Woman Legal Aid Unit, and a National Action Committee on Women in Politics. *Id.* at 152.

<sup>238</sup> Trangsrud, *supra* note 12.

<sup>239</sup> *Burkina Faso Report on FGC*, *supra* note 198.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

desensitization or by any other procedure.”<sup>243</sup> The government enforced the law after educating themselves and providing educational campaigns to the community.<sup>244</sup> Before this law, although the Criminal Code prohibited the practice, women did not challenge the practice in court and the government had “no interest in imposing the existing laws on unwilling families.”<sup>245</sup>

## X. REPLICATING SUCCESS STORIES IN PRACTICING COUNTRIES

¶58 The common thread that runs throughout the success stories of the aforementioned countries is progress, not through the legal system, but through the social system, as well as concentrated commitment to whatever eradication approach is chosen. Both FGC-practicing and non-practicing countries concede that that change is dependent on an “alteration of the economic and social conditions that lead people to believe in the importance of circumcision.”<sup>246</sup> In dissecting FGC eradication success stories individually and collectively, it becomes apparent that particular elements overlapped from story to story, presumably because they proved effective in the fight against FGC. Such factors include education delivered by credible community members, support by government and non-government organizations (e.g., religious and medical institutions), and alleviation of fear associated with marriageability. In the same vein, there are common unsuccessful tactics such as those originally chosen by Egypt, which were either rejected or eventually replaced with the aforementioned successful tactics. Unsuccessful strategies include legislation (although proven successful in some countries, the success derived from education and community support more than pure legislative command), compensation, and imposition of outside (Western) perspectives, such as that FGC must be outlawed because it is a harmful custom from which girls should be protected.<sup>247</sup>

¶59 Education by Africans to Africans is, based on history, the most effective means of influencing the future of practicing cultures. It is crucial that African women are empowered by African women so that trust and credibility is established, and the message is respected.<sup>248</sup> Even in those countries that experienced a shift through the law, such as in Egypt and Cote d’Ivoire, laws were successfully passed based on educational insights primarily delivered by credible community members.

<sup>243</sup> Report on Female Genital Mutilation, *supra* note 135.

<sup>244</sup> Educational campaigns were ignited when the Minister of Family and the Promotion of Women was appointed as the campaign’s president. She focused on information dissemination, enforcement of the law, and providing seminars where the practice was most prevalent. Additionally, the Minister took advantage of every opportunity to talk to women and local authorities about the negative affect FGC has on women.

<sup>245</sup> Report on Female Genital Mutilation, *supra* note 135.

<sup>246</sup> Ahmed Abdalleh, a professor of psychology at Zagazig University, believes that community social structure, rather than religion, is the driving force of the practice. Emad Mekay, *EGYPT: Will FGM Fatwa Make a Difference?*, The Female Genital Cutting Education and Networking Project (Nov. 29, 2006), available at

[http://fgmnetwork.org/news/show\\_news.php?subaction=showfull&id=1164978388&archive=&template=](http://fgmnetwork.org/news/show_news.php?subaction=showfull&id=1164978388&archive=&template=)

<sup>247</sup> P. Stanley Yoder and Mary Mahy, Female Genital Cutting in Guinea: Qualitative and Quantitative Research Strategies, MEASURE DHS (June 2001), available at <http://www.measuredhs.com/topics/gender/FGC-CD/pdfs/FGCinGuineaResearchStrategies.pdf>.

<sup>248</sup> In fact, in some parts of Africa, youths are being targeted as agents for change, with the thought that youths are adaptable, vibrant, free, and able to circulate the message. Hilda Okoisor, *Youth are Key to the Ending of Harmful Practices*, THISDAY Online (Mar. 14, 2007), available at <http://allafrica.com/stories/200703140137.html>.

¶60 The Tostan program has proven to be effective in numerous eradication efforts. This approach entails creating a program in the villagers' native language using song, theater, books, storytelling, games, and poetry. Tostan has a history of acting as a sort of "pyramid scheme."<sup>249</sup> Graduates are eager to share their experience and growth with others. Even when met with an initially hostile reception, the program's credibility has resulted in achievements. Tostan's nondirective approach expresses respect for others and "provides a forum where women can safely engage together in free and equal deliberation."<sup>250</sup>

¶61 Egypt is a good example of a country that has experienced both failure and success in its efforts to eradicate FGC. Egypt's failure resulted from weak legislative provisions that vaguely condemned, rather than clearly denounced, the practice in its penal code and Constitution.<sup>251</sup> Furthermore, a decree prohibiting FGC outside of public hospitals generated even greater demand for the practice.<sup>252</sup>

¶62 Conversely, Egypt experienced success when international organizations took it upon themselves to develop FGC educational programs for Egyptian citizens.<sup>253</sup> One such organization, Coptic Evangelical Organization for Social Services, took a personalized approach, traveling from village to village to raise each community's standard of living and address FGC (along with other issues). A key element to this program was receiving permission from village leaders before introducing the program into the village. Once in the village, efforts did not focus solely on FGC, but also on literacy, health care, and family planning, thereby placing FGC within a broader range of social issues.<sup>254</sup> The strategy of integrating FGC discussion within a dialogue of other social issues has proven to be a successful strategy in eradication efforts.<sup>255</sup>

¶63 FGC is unique in that its perpetuation is directly linked to a dependency on community expectations related to marriageability and status. As a result of this social structure, both the continuation of the practice and the potential for eradication hinges on "nearly everyone do[ing] it or no one do[ing] it."<sup>256</sup> Therefore, replicating success stories involves the "critical mass" theory, the idea that success requires a group of people taking a collective stance. In other words, no one individual acting on their own can succeed, but rather, enough people at one time have to be on the same track for progress to be achieved.<sup>257</sup>

¶64 A potentially powerful solution lies in integrating the critical mass theory with the pledge theory. The "pledge technique," as used in the Chinese culture to end the practice of footbinding, has been utilized in Senegal to get future generations to abandon the

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<sup>249</sup> *RPCVs Dave Orphal and Sharona Thompson Head Back to Senegal to Work for Elimination of Female Genital Mutilation*, PEACE CORPS ONLINE (Aug. 17, 2003), <http://peacecorpsonline.org/messages/messages/2629/2015546.html>.

<sup>250</sup> *Id.*

<sup>251</sup> Syer, *supra* note 227, at 854.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 858.

<sup>254</sup> Yoder & Mahy, *supra* note 247.

<sup>255</sup> See Slackman, *supra* note 226 (discussing that the movement to eradicate FGC broke through a major barrier of change after a 13-year-old died as a result of a procedure to remove her clitoris. The tragic event quickly brought the practice into the public and it was no longer taboo to discuss FGC in public, such as on television news shows and in newspapers.).

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

requirement of marrying only females who have undergone FGC.<sup>258</sup> The process of the anti-footbinding pledge technique was as followed:

First, they carried out a modern education campaign, which explained that the rest of the world did not bind women's feet. The discovery of an alternate is necessary but not sufficient for change. Second, they explained the advantages of natural feet and the disadvantages of bound feet in Chinese cultural terms. New information about health consequences, again, is necessary but not sufficient for change. Third, they formed natural-foot societies, whose members publicly pledged not to bind their daughters' feet nor to let their sons marry women with bound feet. The problem is that if only one family renounces footbinding their daughters are thereby rendered unmarriageable. The pledge association solves this problem – if enough families abandon footbinding then their children can marry each other.<sup>259</sup>

¶65 A comparable technique could be implemented in FGC practicing communities by organizing a critical mass of families for the purpose of making an anti-footbinding type pledge. Such a pledge would declare the abandonment of FGC in the hopes that future generations are not forced to endure the practice to secure marriage.

¶66 Additionally, seeing a change is more likely when it comes from within and it is vital to seek out local partners who can have a greater impact on the community. Success stories, such as those that incorporate the Tostan philosophy, indicate that to sustain attitudes and behavior as well as to generate strong community support for the abandonment of FGC, adjacent communities must engage in systematic communication of changes. National human rights and health legislation must be linked to local change to create synergies that anticipate and manage complications from FGC (e.g., improved health care services).<sup>260</sup>

## XI. CONCLUSION

¶67 This comment has attempted to merge two sides together to present fair solutions that consider the beliefs of those who oppose and those who support FGC. The cultural tradition continues to present a challenge to human rights laws, yet will presumably continue in the face of legal restrictions if a shift in perspective does not take place. Education should not revolve around preaching that FGC is *wrong*; rather, education should focus on the benefits of providing future generations the opportunity to live a life free of pain and free of fear that their genitalia is linked to a social status and role in the community. It is only through patience, African support, modesty, and non-judgmental attitudes on both sides of the debate that the cultural practice will evolve into one that maintains its celebration, but abandons its physical and emotional pain.

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<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Accelerating the Abandonment of Female Genital Cutting: Community Change To Support Human Rights*, United States Agency for International Development (USAID) (June 6, 2006), available at <http://www.maqweb.org/techbriefs/tb31fgc.pdf>.